BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

IN THE MATTER OF THE NEBRASKA PUBLIC SERVICE COMMISSION ON ITS OWN MOTION TO CONDUCT AN INVESTIGATION ON INTRASTATE SWITCHED ACCESS CHARGE POLICIES AND REGULATIONS CODIFIED IN NEB. REV. STAT. SECTION 86-140.	**Application No. C-4145/NUSF-74/PI-147**

QWEST CORPORATION'S INITIAL COMMENTS

Qwest Corporation ("Qwest") files the following initial comments in response to the Commission's Order Opening Docket and Seeking Comment in this proceeding dated February 24, 2009 (the "*Initial Order*").

Introduction

This docket arises out of the Commission's rejection of Qwest's 2008 proposed increase in intrastate switched access rates in Application No. C-3945/NUSF-60.02/PI-138. In that case, the Commission determined that the proposed increase could not be supported as "fair and reasonable" on the basis of Qwest's dramatically decreased NUSF distributions, or because other providers were permitted to charge more for intrastate switched access than Qwest was charging. Other than apparently rejecting these two decision factors, the Commission did not determine what factors to be considered in determining what constitutes a "fair and reasonable" intrastate switched access rate pursuant to NEB. REV. STAT. § 86-140. The Commission did, however, set forth a few tentative conclusions regarding how it would determine whether access rates are "fair and reasonable" in future cases. First, the Commission concluded that a "traditional rate case proceeding with a full cost study" was not required by NEB. REV.

STAT. § 86-140, nor was such a detailed analysis practicable given the expedited schedule for resolution of access rate cases required by the statute.[1]

In connection with this preliminary policy conclusion, the Commission observed that "[a] carrier should seek revenue generation from its own customer[s] first, examining local rates in both urban and rural rate areas, prior to seeking access rate increases that generate revenue on the backs of other ratepayers."[2] In addition, the Commission concluded that "some minimal level of financial analysis, including a showing [of] revenues and costs, needs to be provided by any applicant seeking access rate increases under § 86-140."[3]

The Commission reiterated this stated intent in the *Initial Order* in this case.[4] In the *Initial Order*, the Commission seeks comment on "overarching policy objectives and goals rather than specific instances or rates" regarding the implementation and application of NEB. REV. STAT. § 86-140. The Commission seeks comments on five proposals as minimum evidentiary criteria to be considered in switched access rate dockets, and seeks comment on four additional questions. The Commission also seeks "explanatory information and alternative suggestions or proposals." Qwest's proposal suggests a limited analysis based on using a single intrastate switched access rate as a proxy for cost, rather than financial analysis for setting switched access rates, so Qwest offers no specific recommendations on the types of financial information that might be

---

[1] February 3, 2009 Order, Application C-3945/NUSF-60-02/PI-138, p. 10.

[2] *Id.*, p. 11.

[3] *Id.*

[4] *Initial Order*, p. 2.

considered in setting switched access rates. Any reduction in switched access rates must be offset in a revenue neutral manner.

Qwest's Proposal: Limited Cost Analysis With Uniform Inputs and Elements For All Carriers.

Financial information presented without reference to either cost, competitive distortions, or the revenues that offset prior access reductions would lead to potentially inequitable rates subject to manipulation. If the Commission does not consider factors such as decreasing NUSF support or the market distortions that occur when some carriers are permitted to have higher access rates than others, the utility of general financial analysis to justify switched access rates is limited. In Qwest's view, the fact that revenues previously allocated to guarantee revenue-neutral intrastate switched access reduction are less than a quarter of original distributions is of critical importance, as is the fact that some carriers are able to receive subsidies from switched access revenues that others competing in the same areas are unable to receive. Qwest understands that the Commission has decided these issues in the context of Qwest's request for access rate increases, but these decisions undermine the reliability and usefulness of general financial analysis.

Switched access rates have never been based on cost analysis. Rather, these rates have historically included a subsidy to keep local exchange service affordable. Even the interstate rates of rural ILECs have been kept artificially high in order to promote the affordability of local service.

As competition in the market has grown, the idea that carriers receive differing switched access subsidies based solely on regulatory classification (*i.e.*, RBOCs, rural companies, or CLECs) has fallen apart. Instead, a single uniform rate for all LECs would remove the competitive distortions in the marketplace - and using explicit subsidies for LECs with higher costs of providing local service would make the price of the service more transparent to end user customers. However, even if the Commission decides that replacing implicit subsidies with explicit support or charges is no longer the appropriate policy, a single uniform state rate is still an appropriate method, in order to eliminate other distortions in the market place.

Since access reform began in Nebraska in 1999 with the initial use of NUSF distributions to bring intrastate rates towards interstate rates, and continuing through its request for access rate increases, Qwest has argued for two important principles in Nebraska and elsewhere: (1) revenue-neutral access reductions of intrastate switched access rates; and (2) competitive neutrality in rate-setting. If the goal is to eliminate implicit subsidies in switched access rates, a company's financial performance is not particularly helpful in setting switched access rates. Financial performance is subjective – it varies from carrier to carrier and from time to time, and can be impacted by a number of factors. Once revenue-neutrality is abandoned, the best approach to setting and reviewing access rates is by looking at cost. If the goal is to maintain a specific rate of return, and a single uniform rate is not approved, then full cost studies should be required for those rate of return carriers.

Qwest proposes a uniform rate level using a proxy for cost, consistent with the FCC CALLS order. In Docket Nos. C-1628 and NUSF-17, Qwest presented its interstate switched access rate as a proxy for cost to be used in setting rational switched access rates, and proposes the same approach here. This approach does not require a detailed cost analysis, but would benchmark all carriers' rate elements to the

Qwest interstate switched access rate elements. This would yield a uniform, statewide intrastate switched access rate for all carriers, which would create a simplified rate structure and reduce incentives for bypass and arbitrage. If the Commission believes Qwest's interstate rate is too low, and wishes to maintain some subsidy for local services, then the Commission could benchmark from Qwest's intrastate rate, or could benchmark off another rate set by the FCC.

In the absence of a uniform state wide proxy solution, the current system protects certain carriers' subsidies. Qwest obtains most of its revenues from its retail customers, in markets characterized by expanding and well-funded competition. Most other ILECs in Nebraska obtain the lion's share of their revenues from entities other than retail customers (*e.g.*, switched access, state and federal universal service funds), in markets legally protected from much competition.[5] Qwest's switched access rates are challenged as unreasonable, while other carriers that provide service in Qwest's service area (*e.g.*, Cox and NT&T) charge rates that are higher than the rates Qwest recently proposed without challenge. Similarly, rural ILECs that do not compete in Qwest territory but provide service to the same kinds of high-cost areas Qwest serves are also permitted to charge higher access rates than Qwest. Even adjusting rural ILEC intrastate switched access rates towards "interstate" switched access rates fails to solve the problem, because rural ILEC interstate switched access rates are not established in the same way Qwest's interstate rates are set.[6]

---

[5] 47 USC § 251(f) limits the requirements for rural ILECs to provide interconnection services to competing carriers.

[6] Qwest recognizes that the Commission does not seek to change or challenge any access rates in this proceeding, but these facts demonstrate the inequities of the current system and the need for new policies.

Other facts also illustrate the difficulties of the current system. Disparities between carriers' rates, and disparities between interstate and intrastate rates, increase the incentives for carriers and other parties to engage in arbitrage schemes like "traffic pumping" and other access stimulation tactics. Ultimately, any rate system that is not grounded in at least some cost analysis will create winners and losers, and will create incentives for parties to structure their businesses around regulatory incentives rather than true economic signals. By examining switched access rates with uniform inputs and elements, the Commission can make more objective and competitively neutral determinations of access rates.

Additional Questions

(1) Should limits be placed on the frequency of access cases that any carrier can file with the Commission?

No. Once comprehensive access reform is in place, carriers should be permitted to seek changes to the benchmark rate as circumstances and markets change. If the Commission adopts Qwest's interstate switched access rates as a cost proxy, or another uniform state wide proxy against which to evaluate intrastate switched access rates, relevant circumstances will change much less frequently and in more predictable ways. Another weakness of basing access rates on financial performance or "need" would be that financial performance or "need" can change often, and unpredictable orders of magnitude, which might necessitate placing limits on the frequency and magnitude of requested rate changes if such a model is adopted.

(2) How are access rates structured and does the structure vary from carrier to carrier? Should the structure of access rates affect the Commission's analysis of access rate increases?

The functional elements used to provide switched access do not vary among local exchange carriers ("LECs"), but the method of billing differs substantially – particularly among competitive local exchange carriers ("CLECs"). Different carriers structure their switched access rates differently. Some carriers provide a single blended rate charged regardless of whether a particular function is performed. Others break the rates into various elements, and for carriers that break rates down into various elements, the elements are broken down differently, or charged on a different basis (for example a per-line fee instead of a per-minute fee).

The Commission has the opportunity in this docket to put forward a uniform scheme by which all LECs bill switched access, and could streamline switched access by ordering that only those rate elements provided may be billed. Switched access rate structure and elements are relatively common among ILECs, and is therefore relatively simple to adopt the Qwest rate structure. Using Qwest's element by element rates, both in amount and structure,[7] as a proxy or benchmark for all carriers' rates minimizes the problems with different access billing paradigms, creating predictable and uniform rates for all interexchange carriers in Nebraska. In using the element rates, whether based on Qwest's interstate rates or not, LECs with significant distances will still be able to recover transport costs- and would not be capped at a single composite rate.

[7] Qwest's current intrastate switched access rates use the same rate element structure as its FCC-imposed interstate rate structure.

(3) Are the Commission's initial policy goals set out in 1999 for intrastate switched access still valid today? Have they been achieved? What further steps, if any, should be considered?

(4) Should the Commission's policy of intrastate switched access reform be modified? If so, in what way?

In Docket No. C-1628, the Commission declared a policy goal to move intrastate switched access rates towards cost by replacing revenue lost as a result of decreasing intrastate switched access rates with NUSF distributions. The Commission took a significant step away from this policy in 2004 when it changed the method of NUSF distributions to be based on an estimate of carriers' costs to provide local exchange service in Docket No. NUSF-26, later modified by NUSF-50. In its recent decision rejecting Qwest's requested rate increase, the Commission appears to have abandoned its original strategy of revenue-neutral intrastate switched access rate reductions. This current docket appears to be seeking guiding principles for the Commission going forward.

Revenue neutrality is still an important concept, and the Commission still needs to allow any LEC impacted by switched access reductions to recover the lost revenue through other sources. Other sources could include a state SLC, USF, or local rate increases.

Going forward, the Commission should be mindful of and monitor FCC proceedings on intercarrier compensation. However, the current intercarrier compensation docket has been pending for eight years, so it is likely wise for this Commission to develop its own approach to determining fair switched access rates – though one that takes into account potential FCC rulings and proceedings.

Qwest suggests that the Commission first reform its policy. First, develop switched access rates using uniform inputs and elements for all carriers – using the Qwest interstate rates or other uniform state wide rate as a proxy. Then, apply those in a competitively neutral manner to all carriers. Finally, and also in a competitively neutral manner, apply explicit subsidies where necessary to keep "rural" rates for basic services affordable (yet not necessarily identical) compared to "urban" rates.

This may require more analysis and more detailed proceedings than the Commission envisions at this point, based on comments in the Qwest access rate order and in the order opening these proceedings. Certainly, any review of specific access rates faces the statutory requirement to resolve such disputes within 90 days, and the Commission rightly noted this expedited proceeding requirement as a consideration in determining access rate policy. However, the Commission has the authority to extend deadlines in specific cases for good cause, and the Commission can develop principles and procedures in this proceeding that should enable disciplined analysis based on the Qwest's interstate rates or other uniform state wide rate, to take place within the time allotted by NEB. REV. STAT. § 86-140 for resolution of access rate challenges. In any event, whether by its own authority to control schedules for good cause or by seeking relief from the legislature, the Commission should not let process and procedure trump the important public policy of proper rate-setting. Qwest urges the Commission to adopt a more uniform, competitively neutral approach applied in a revenue neutral manner to determining switched access rates in this proceeding, and develop processes and procedures that will allow the prompt and orderly application of such an approach in specific access rate cases.

Dated: April 23, 2009

Respectfully submitted,

QWEST CORPORATION

By:______________________________

Jill Vinjamuri-Gettman #20763
Michael J. Mills #19571
GETTMAN & MILLS LLP
10250 Regency Circle Suite 200
Omaha, NE 68114
(402) 320-6000
(402) 391-6500 (fax)
jgettman@gettmanmills.com

Timothy J. Goodwin
QWEST CORPORATION
1801 California, Ste. 1000
Denver, CO 80202
303-383-6612
tim.goodwin@qwest.com